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No. 278

In the Supreme Court of the United States

OCTOBER TERM, 1944

COMPANIA TRANSATLANTICA (HONDURAS) COMPANIA
TRANSATLANTICA ADMINISTRADA POR EL GOBIERNO
PETITIONER

S.S. 'MANUEL KENUR' HER ENGINEER OF THE UNITED
STATES OF AMERICA, CLAIMANT, APPEARING
ORALLY, AND TORO GARCIA DON ENRIQUE

ON PETITION FOR A WRIT OF HABEAS CORPUS
AND FOR A WRIT OF HABEAS CORPUS
DUI

AND FOR THE UNITED STATES OF AMERICA

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 278

COMPANIA TRASATLANTICA (FORMERLY COMPANIA
TRASATLANTICA ADMINISTRADA POR EL ESTADO),
PETITIONER

v.

S. S. "MANUEL ARNUS," HER ENGINES, ETC., UNITED
STATES OF AMERICA, CLAIMANT, APPEARING SPE-
CIALY, AND TODD-GALVESTON DRY DOCKS, INC.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIR-
CUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 134-137) is reported at 141 F. (2d) 585. The findings of fact and conclusions of law of the district court (R. 118-120) are reported at 51 F. Supp. 577.

JURISDICTION

The judgment of the circuit court of appeals (R. 137) was entered on March 28, 1944. The time within which to file the petition for writ of certiorari was extended to and including July 28, 1944, by an order of Mr. Justice Jackson dated June 23, 1944 (R. 138). The petition for a writ of certiorari was filed on July 21, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the circuit court of appeals has jurisdiction of an appeal where a possessory libel *in rem* in admiralty has been dismissed and the vessel released unconditionally by the district court before any stay or supersedeas was sought.

2. Where a vessel to which the United States asserts title has been placed by it in the custody of a private company for the purpose of estimating the cost of repairs, whether one claiming title to the vessel has a cause of action *in personam* against the private company for damages for the vessel's detention.

3. Whether a court of the United States may consider the validity of acts of a foreign government done within that government's territorial jurisdiction.

STATEMENT

Petitioner is a Spanish corporation which since September 23, 1939, has been operated and controlled by the Spanish Government (R. 4). On March 11, 1943, asserting title, it filed in the United States District Court for the Southern District of Texas a libel (R. 4-6) *in rem* and *in personam* against the S. S. *Manuel Arnus*, a vessel registered at Barcelona, Spain (R. 4), and respondent Todd-Galveston Dry Docks, Inc., a Delaware corporation doing business in Texas (R. 28), seeking possession of the *Manuel Arnus* and damages for her detention. On the same day, process of the court was issued and served on the vessel and on respondent Todd-Galveston (R. 10). The United States filed a petition in intervention (R. 7-11), supported by documentary exhibits (R. 12-27), asserting that it was the sole owner of the vessel and entitled to possession of it, and praying that the order for attachment of the S. S. *Manuel Arnus*, previously issued, be vacated and the libel dismissed for want of jurisdiction. Petitioner filed an answer to the petition in intervention (R. 34-37), accompanied by supporting affidavits and exhibits (R. 38-117). Pursuant to agreement of the parties (R. 59, Pet. 4), the case was submitted on pleadings, affidavits, and exhibits for determination of the questions raised by the petition of the United States and the answer of petitioner.

From these, the following undisputed facts appear:

The *Manuel Arnus* arrived at Havana, Cuba, on October 25, 1936 (R. 39), after the outbreak of the Spanish Civil War. During her voyage, a "Worker's Committee" had taken control of the vessel, refusing to recognize the authority of her master (R. 39). Following her arrival in Havana, the Spanish Consul General in Cuba appointed officers of the Mexican Navy to take command of the vessel, but the master, and the Havana agents of petitioner, refused to recognize their authority (R. 40-42). The Cuban Government refused to take any part in this dispute (R. 42). On March 27, 1938, the vessel was removed to Vera Cruz, Mexico, under the command of officers of the Mexican Navy and over the protest of petitioner (R. 43). On March 20, 1941, a declaration of abandonment was issued by the Director General of Merchant Marine of the Republic of Mexico (R. 7-8, 13-14) declaring that the vessel had been anchored at Vera Cruz since 1937 [1938] without a recognized legal owner and had been abandoned by its legal owner; that the vessel was in urgent need of repair and constituted a menace to navigation; that its crew had refused orders of the Mexican Government for towage to a place of greater safety; and that the vessel had accordingly been abandoned within the terms of articles 215, 217, and 218, par. 4 of the Law on General Means of

Communication, which became effective January 19, 1940 (which are set out at R. 15-17). The order directed the captain of the port to take possession of the vessel, and on March 21, 1941, the Captain of the Port of Vera Cruz, Republic of Mexico, did take possession of the vessel in the name of the Government of Mexico (R. 8, 47). On or about November 24, 1942, the vessel was towed to Galveston, Texas, for purposes of repair (R. 9, 58).

On March 3, 1943, the Republic of Mexico executed a bill of sale to the United States, transferring all right, title, and interest in the vessel as of September 24, 1942, and warranting the title of the seller (R. 9, 22-24). On or about November 30, 1942, Todd-Galveston received the vessel from the United States Maritime Commission with instructions to make a survey and estimate of the cost of repairing it and making it seaworthy, and it subsequently made such a survey (R. 29-30). On March 11, 1943, the date of filing of the libel herein, the War Shipping Administrator, acting under authority of the Act of June 6, 1941 (55 Stat. 242, 50 U. S. C. App., Supp. III, Secs. 1271-1275), Section 902 of the Merchant Marine Act of 1936 as amended (49 Stat. 2015, 46 U. S. C. Sec. 1242), and Executive Order No. 9054 of February 7, 1942 (7 Fed. Reg. 837), requisitioned all outstanding rights or interests in the vessel, if any, which had not already been acquired by the United States, and notice of such

requisition was duly posted on the vessel and communicated to the interested parties (R. 10-11, 24-27).

On April 15, 1943, the district court entered findings that the United States had acquired title to the vessel by bill of sale from the Republic of Mexico executed March 3, 1943, and transferring title as of September 24, 1942. The court held that it could not inquire into the validity of the proceedings by which the Republic of Mexico had acquired title and that since the United States was in possession of the vessel, claiming title to it, the vessel was not amenable to the process of the court (R. 118-120). Accordingly, on April 26, 1943, the district court entered a decree (R. 120-122) dismissing the libel for want of jurisdiction, vacating all process theretofore issued, including the arrest of the *Manuel Arnus*, and ordering the Marshal to release the vessel and deliver it to the United States. A writ of release was issued April 28, 1943, and was returned by the Marshal April 30, 1943; the Marshal's return states that the vessel was on April 28, 1943, released from the custody of the Marshal by the removal of notices from the vessel and by notification to appropriate officers of the War Shipping Administration and Todd-Galveston.¹ Upon the answer and motion to dismiss of respondent Todd-

¹ The writ and the return to it are not in the record, but copies of them, certified by the clerk of the district court, were attached to the brief of the United States in the circuit

Galveston Dry Docks, Inc., both filed May 15, 1943 (R. 28-31), to which no responsive pleadings were filed, the court on June 14, 1943, entered a further order (R. 122-123) declaring that the case had on April 26, 1943, been "fully and completely dismissed as to all parties."

On July 1, 1943, the District Judge entered an order (R. 131) allowing petitioner's appeal to the circuit court of appeals "without deciding whether the questions involved are or are not moot." and staying further action on the decree of April 26, 1943, pending appeal. The circuit court of appeals, on motion of the United States (R. 132-133), dismissed the appeal insofar as the action was *in rem* and affirmed the judgment of dismissal of the district court insofar as the action was *in personam* (R. 137), holding that insofar as the appeal was *in rem* it was moot since the vessel was no longer in the custody of the court (R. 136), and that the asserted claim *in personam* against respondent Todd-Galveston "presents nothing of substance for determination" since it appeared that the vessel was in the possession of the United States and that custody had been delivered to Todd-Galveston for a limited purpose only (R. 136-137).

court of appeals and are set forth in the Appendix hereto (pp. 15-18, *infra*). Petitioner does not deny that the vessel was released in the manner set forth in the return.

ARGUMENT

Petitioner contends that the decision of the court below dismissing the appeal because there was no longer a *res* in the custody of the court to support the libel is erroneous and in conflict with the decision of this Court in *The Rio Grande*, 23 Wall. 458; that the court erred in affirming the dismissal of the libel *in personam* against the Todd-Galveston Dry Docks, Inc.; and that the court improperly refused to conduct a judicial inquiry into the title which the Mexican Government had acquired to the *Manuel Arnus* prior to its transfer to the United States. We submit that these contentions are unsound.

1. Under Rule 18 of the Admiralty Rules for the Southern District of Texas, property seized by the Marshal may be released:

Fourth, in possessory and petitory suits upon the order of the Court only, and on such security and terms as ordered.

Rule 57 of the Admiralty Rules of this Court likewise contemplates the release of property in the custody of the Marshal upon order of the district court. The district court's decree of April 26, 1943, expressly directed the Marshal forthwith to release the *Manuel Arnus* from custody, and made no provision for security. In releasing the vessel on April 28, 1943, therefore, the Marshal acted in compliance with the district court's orders and in conformity with the applicable rules of court.

Rule 73 (d) of the Federal Rules of Civil Procedure, made applicable to admiralty cases by Rules 10² and 12³ of the Rules of the Circuit Court of Appeals for the Fifth Circuit, provides that "whenever an appellant entitled thereto desires a stay on appeal, he may present to the court for its approval a supersedeas bond * * *." Petitioner filed no supersedeas bond and made no request for a stay until its petition for appeal, allowed July 1, 1943, long after the vessel had been released; nor did it at any time apply to the district court to modify the terms of its order of April 26, 1943, directing the vessel's unconditional release from custody. It is clear, therefore, that the Marshal's release of the vessel was proper, and that when the appeal was before the circuit court of appeals there was neither actual nor constructive possession of the vessel.

The vessel having been properly released, there was no longer a *res* before the district court and hence no jurisdiction of a proceeding *in rem*. Cf. *The Brig Ann*, 9 Cranch 289; *Taylor v. Carryl*, 20 How. 583, 599-600.⁴ Accordingly, the decision of

² Rule 10 of the Rules of the Circuit Court of Appeals for the Fifth Circuit provides in part: "Federal Rules of Civil Procedure, adopted by the Supreme Court pursuant to Act of June 19, 1934, Nos. 46, 50, 51, 73, 74, 75, and 76, are adopted as rules of this court in cases to which they apply."

³ Rule 12 provides in part: "Appeals in admiralty are otherwise governed by the general rules of this court."

⁴ The fact that the vessel is apparently lying within the territorial jurisdiction of both courts (Pet. 4) is immaterial. As was said in *The Brig Ann*, 9 Cranch at p. 291, "although

the court below dismissing the appeal *in rem* is correct, and it accords with the prior decisions of that court in *Canal Steel Works, Inc. v. One Drag Line Dredge*, 48 F. (2d) 212, certiorari denied, 284 U. S. 647, and *The Kotkas*, 135 F. (2d) 917; and with the decision of the Circuit Court of Appeals for the Third Circuit in *The Denny*, 127 F. (2d) 404.

Petitioner (Pet. 12, 18-22) asserts conflict with *The Rio Grande*, 23 Wall. 458; *The Kaiser Wilhelm II*, 246 Fed. 786 (C. C. A. 3); and *The Villarperosa*, 43 F. Supp. 140 (E. D. N. Y.). In *The Rio Grande*, the release and removal of the vessel was unlawful since the appeal, allowed prior to its release, operated as a supersedeas;⁵ the holding of the case was merely that "an accidental or fraudulent or improper removal" of the vessel from the custody of the Marshal did not oust the jurisdiction (23 Wall. at 465). *The Kaiser Wilhelm II* was an earlier decision by the same court which decided *The Denny*, *supra*; the present question was not discussed in the opinion and the report does not indicate whether or not the vessel had been released. In *The Villarperosa*, the vessel was not released unconditionally but remained in the constructive custody of the court.

judicial jurisdiction once attached, it is divested by the subsequent proceedings; and it can be revived only by a new seizure."

⁵ See Sec. 23 of the Judiciary Act of 1789, 1 Stat. 85, made applicable to appeals in admiralty by the Act of March 3, 1803, 2 Stat. 244.

2. The libel sought relief *in personam* only against Todd-Galveston. None was sought against the United States, and none could have been, for a claim for damages for detention of a vessel under claim of right is one sounding in tort upon which the United States has consented to be sued. Cf. *Tempel v. United States*, 248 U. S. 121. But, as the court below rightly held in affirming the judgment as to Todd-Galveston,⁶ that company was a bailee for a special purpose, whose custody of the vessel did not oust the possession of the United States.⁷ Hence the detention complained of is a detention by the United States for which it has

⁶ The petition is somewhat misleading as to the disposition which the circuit court of appeals made of the district court's order dismissing the case as to Todd-Galveston. As a question presented (Pet. 8-9) and as a reason for granting the writ (Pet. 12), petitioner urges that the court below held that it lost jurisdiction of the *in personam* action because it had no jurisdiction of the *res*. The argument is subsequently developed and a conflict with *The Denny*, 127 F. (2d) 404 (C. C. A. 3) asserted (Pet. 23-24). The court below, however, did not hold that there was no jurisdiction of the action against Todd-Galveston, but expressly affirmed the District Court's dismissal of that *in personam* action because the ship was in the possession of the United States and only in the custody of Todd-Galveston for temporary and limited purposes (R. 136-137). Consequently, there is no conflict with *The Denny* in any jurisdictional aspect or otherwise.

⁷ Petitioner suggests (Pet. 27-28) that the facts as to Todd-Galveston's possession were not before the court. But they were pleaded in Todd-Galveston's verified answer (which was filed before the entry of a final decree dismissing the case as to Todd-Galveston) and are nowhere denied in the pleadings or the petition here.

not consented to be sued and for which Todd-Galveston is not liable. The case is not in conflict with *The Denny, supra*, for there the action was allowed to proceed *in personam* against a private corporation having actual possession of the vessel and no question was involved as to the liability of a bailee for a special and limited purpose.

3. The decision of the district court dismissing the libel was correct for other reasons. Petitioner suggests that in granting the petition of the United States to dismiss the libel the district court denied petitioner opportunity to litigate the question of title to the *Manuel Arnus* (Pet. 25-31). However, the parties agreed to submit that question upon pleadings and affidavits (R. 59; Pet. 4), and the district court's decision assumed as true all facts set forth by petitioner (R. 120). It is undisputed that the United States acquired at least whatever title the Mexican Government had, and the district court properly held that it could not examine into the validity of the title claimed by the Republic of Mexico.⁸ In so holding, it relied on the well-settled principle that "the courts of one country will not sit in judgment on the acts

⁸ Consequently, there is no need to consider the district court's alternative holding (R. 120) that possession by the United States under claim of title ousted the court's jurisdiction, although we submit that this holding is correct and, contrary to petitioner's assertion (Pet. 28-29), not in conflict with *The Davis*, 10 Wall, 15, 21, or *United States v. Lee*, 106 U. S. 196.

of the government of another done within its territory." *Underhill v. Hernandez*, 168 U. S. 250, 252; see also *Ricaud v. American Metal Co.*, 246 U. S. 304, 309; *Oetjen v. Central Leather Co.* 246 U. S. 297, 303; *United States v. Belmont*, 301 U. S. 324, 327; *United States v. Pink*, 315 U. S. 203, 233.

Petitioner seeks to escape the application of that principle by asserting that the *Manuel Arnus* was brought into Mexico by force and was therefore not subject to its laws (Pet. 32-39). The assertion is immaterial,⁹ for whether or not the Mexican Government, in applying the Mexican law of abandonment to the *Manuel Arnus*, complied with the requirements of international law is, like any other question going to the validity of the action of a foreign government, a diplomatic, not a judicial matter. A similar contention was rejected by this Court, in *Oetjen v. Central Leather Co.*, *supra*, where it was contended that the seizure was in violation of the "Regulations Respecting Laws and Customs of War on Land" annexed to the Hague Convention of 1907. The cases relied upon by petitioner (Pet. 33-35) relate to the question whether a foreign vessel shall be held subject to the laws of the jurisdiction

⁹ Moreover, the vessel was not brought to Mexico by force; it was brought there voluntarily by those who had acquired control of it in Cuba with the approval of the accredited representative of the Spanish Government there (see Statement, *supra*, p. 4).

in which the court is sitting, and are irrelevant to the present question of the respect which a court of one jurisdiction must pay to governmental acts of another.

CONCLUSION

The decision below is correct and presents no question of general importance. There is no conflict of authorities. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1944.

